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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

03-CV-02620-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM, INC., a Washington
corporation,

Plaintiff,

v.

CYBERPOWER PTY, LTD., a foreign
corporation, and JOHN DOES 1-20,

Defendants.

CV03 2620p

COMPLAINT FOR TRADEMARK
INFRINGEMENT, CYBERPIRACY,
UNFAIR COMPETITION, AND
UNFAIR BUSINESS PRACTICE

Jury Trial Demanded

Plaintiff Amazon.com, Inc. ("Amazon.com"), through its attorneys, alleges as follows:

I. SUMMARY

Defendant Cyberpower Pty., Ltd. ("Cyberpower") and other unknown defendants are engaged in a marketing campaign in which they have been sending e-mails to consumers with forged "from" lines and other e-mail routing information, creating the impression that the e-mails are from Amazon.com. Defendants have intentionally used the AMAZON.COM® mark in the e-mail to cause the recipient to believe that the e-mail is from Amazon.com and/or to get past e-mail filters. Defendants do not have permission to use the AMAZON.COM® mark and are not affiliated in any way with Amazon.com.

By this complaint, Amazon.com seeks to prevent consumer confusion and protect AMAZON.COM®, one of the world's best-known brands, from intentional infringement and

COMPLAINT FOR TRADEMARK INFRINGEMENT,
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UNFAIR BUSINESS PRACTICE - 1

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1 cyberpiracy. Defendants have recently conducted an e-mail marketing campaign advertising "Free
2 Grants," using e-mails that falsely claim that they are from "Amazon.com."

3 Defendants are using the AMAZON.COM® trademark in their e-mail marketing campaign
4 to immediately convey to consumers an association with Amazon.com, to circumvent e-mail filters,
5 and to unfairly trade off the reputation and goodwill of the AMAZON.COM® mark. Since
6 commencing operations on the World Wide Web in 1995, Amazon.com's annual sales have grown
7 to over \$3.9 billion, and Amazon.com has become a Fortune 500 company. With tens of millions of
8 customers worldwide, Amazon.com is among the best-known and most popular Internet retailers.

9 Amazon.com has extensively promoted its business using the AMAZON.COM® mark, and
10 Internet shoppers and consumers almost universally recognize AMAZON.COM® as a brand
11 identifier for Amazon.com's websites and products. Consumers have a strong association between
12 the AMAZON.COM® mark and Amazon.com's websites and the strength of the AMAZON.COM®
13 trademark—one of Amazon.com's most valuable corporate assets.

14 Defendants' use of AMAZON.COM® in connection with their marketing of goods or
15 services is likely to confuse consumers. Defendants' use of AMAZON.COM® will lead some
16 consumers to conclude that Amazon.com is a partner, has a business relationship, or is somehow
17 associated with defendants or their products.

18 Preventing this confusion will help protect consumers from deceptive and fraudulent e-mail
19 practices, allowing consumers to make fully informed choices about where they are shopping on the
20 Internet, thereby promoting the consumer protection goals of the trademark and unfair competition
21 laws. In this action, Amazon.com seeks to enjoin defendants from using the trade name and
22 trademark AMAZON.COM® for the marketing and sale of their products. The unfair competition
23 laws do not allow a latecomer to copy a mark and "free ride" on the goodwill associated with it. A
24 myriad of other names are available. A marketer should not be allowed to benefit from
25 Amazon.com's long term and extensive investment in AMAZON.COM® at the expense of

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COMPLAINT FOR TRADEMARK INFRINGEMENT,
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1 Amazon.com and to the detriment of consumers.

2

II. JURISDICTION AND VENUE

3 1. This is a Complaint for violations of §§ 32 and 43 of the Lanham Act , 15 U.S.C. §
4 1114(1)(Trademark Infringement), 15 U.S.C. § 1125(a) (False Designation of Origin, Unfair
5 Competition), 15 U.S.C. § 1125(d) (Cyberpiracy Prevention), and for other claims arising under state
6 law.

7 2. The Court has original subject matter jurisdiction over this action pursuant to 28
8 U.S.C. § 1331 and 28 U.S.C. § 1338(a). The Court has supplemental jurisdiction over the state law
9 claims pursuant to 28 U.S.C. § 1367.

10 3. The Court has personal jurisdiction over the defendants because the defendants are
11 located in and/or conduct business in this District. Also, the defendants have purposefully availed
12 themselves of the opportunity to conduct commercial activities in this forum, and this Complaint
13 arises out of those activities. E-mails sent from the defendants actively display, disseminate, and
14 promote the infringing AMAZON.COM mark. The publication and dissemination of the infringing
15 trademark in this District is causing ongoing injury to Amazon.com.

16 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c), because a substantial
17 part of the events giving rise to the claim occurred, and continue to occur, in this District. The
18 damage to Amazon.com described herein takes place in this District and elsewhere.

19

III. THE PARTIES

20 5. Amazon.com is a Delaware corporation with its principal place of business in Seattle,
21 Washington. On or about July 15, 1997, Amazon.com registered the trademark AMAZON.COM®
22 with the United States Patent and Trademark Office.

23 6. On information and belief, defendant Cyberpower Pty., Ltd. ("Cyberpower") is a
24 foreign corporation. Cyberpower is or was the registered owner and operator of internet websites
25 advertising "Free Grants," including the websites <www.grantgiveaways.com> and
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COMPLAINT FOR TRADEMARK INFRINGEMENT,
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UNFAIR BUSINESS PRACTICE - 3

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1 <www.freegrantsnow.com>. During the times referenced herein, Cyberpower promoted its
2 websites, products and services through the sending of bulk, unsolicited e-mail, or "spam."

3 7. Amazon.com is unaware of the true names and capacities of defendants sued herein
4 as DOES 1-20, and therefore sues these defendants by such fictitious names. Amazon.com will
5 amend this complaint to allege their true names and capacities when ascertained. Amazon.com is
6 informed and believes and therefore alleges that each of the fictitiously named defendants is
7 responsible in some manner for the occurrences herein alleged, and that Amazon.com's injuries as
8 herein alleged were proximately caused by such defendants. These fictitiously named defendants,
9 along with defendant Cyberpower, are herein referred to as "defendants."

10 8. The actions alleged herein to have been undertaken by the defendants were
11 undertaken by each defendant individually, were actions that each defendant caused to occur, were
12 actions that each defendant authorized, controlled, directed, or had the ability to authorize, control or
13 direct, and/or were actions in which each defendant assisted, participated or otherwise encouraged,
14 and are actions for which each defendant is liable. Each defendant aided and abetted the actions of
15 the defendants set forth below, in that each defendant had knowledge of those actions, provided
16 assistance and benefited from those actions, in whole or in part. Each of the defendants was the
17 agent of each of the remaining defendants, and in doing the things hereinafter alleged, was acting
18 within the course and scope of such agency and with the permission and consent of other defendants.

19 **IV. THE AMAZON.COM® TRADEMARK**

20 9. The term "Amazon.com" is not only the name of Plaintiff's company, but the most
21 important and easily recognized identifier of the goods and services it offers. There is a particularly
22 close association among consumers between Amazon.com the business, the AMAZON.COM®
23 mark, and the products and services offered under the Amazon.com designation. For millions of
24 consumers, the name "Amazon.com" has come to represent wide selection, fast delivery, fair
25 pricing, and excellent security for Internet transactions. Courts in the United States and Greece have
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COMPLAINT FOR TRADEMARK INFRINGEMENT,
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1 entered judgments for Amazon.com that attest to the fame and/or the strong association between the
2 AMAZON.COM® mark and the services offered by Amazon.com.

3 10. AMAZON.COM® mark is one of the best known trademarks on the Internet. For
4 instance:

- 5 • Tens of millions of customers from over 220 countries have made purchases through the
6 Amazon.com Site. Every one of these purchasers has, at a minimum, seen the
7 AMAZON.COM® mark on the Web site, on the packaging in which his or her order was
8 shipped, and in e-mail communications that confirm each order.
- 9 • Many millions more have come to know the AMAZON.COM® mark through
10 Amazon.com's extensive advertising in a variety of media. Since 1996, Amazon.com has
11 spent hundreds of millions on advertising—all of which makes prominent use of the
12 AMAZON.COM® mark—on television and radio, and in newspapers and magazines.
- 13 • According to the MMXI Europe May 2000 European Audience Ratings Report, the
14 Amazon.com, Amazon.co.uk, and Amazon.de sites reach more consumers in Europe than
15 any other site on the Internet.
- 16 • A recent survey by Media Metrix, a company that monitors traffic to popular e-commerce
17 Web sites, identified the Amazon.com Site as one of the most frequently visited shopping
18 sites on the Internet and the largest seller of books (ahead of sites operated by Barnes &
19 Noble and Borders), music (ahead of sites operated by Columbia House and BMG Music),
20 toys, software (ahead of sites operated by <Bestbuy.com> and <CompUSA.com>) and video
21 (ahead of <BlockBuster.com>).
- 22 • Amazon.com's achievements have generated tremendous attention in the media—thousands
23 of articles have been written about the company over the last few years. Feature stores in
24 *Fortune*, *Business Week*, *The New York Times*, *USA Today*, *Advertising Age* and *Wired* have
25 touted the company's success and have identified it as a leading force in the "New

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COMPLAINT FOR TRADEMARK INFRINGEMENT,
CYBERPIRACY, UNFAIR COMPETITION, AND
UNFAIR BUSINESS PRACTICE - 5

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Economy."

- The Amazon.com name is found on literally thousands of Internet Web sites. Not only do important Internet retailers (e.g., AOL.com) carry Amazon.com “banner” ads on their homepages, but more than 800,000 other Web site operators around the world have become Amazon.com “Associates,” and are thus permitted to link to the Amazon.com Site and to display the AMAZON.COM® mark on their Web sites.
- A recent study by Interbrand Group, a leading international brand consultancy company, ranked the 100 most valuable brands in the world, all of which Interbrand identified as having a value in excess of \$1 billion. Interbrand’s study included the AMAZON.COM® mark, ranking its value above such well-known trade names as “Hilton®” and “Guinness®.” Another Interbrand study recognized the AMAZON.COM® mark’s value in the year 2001, ranking its value above 24 other trade names such as “Burger King®” and “Wall Street Journal®.”

11. The AMAZON.COM® mark is famous by virtue of its inherent distinctiveness and substantial secondary meaning as a designation of the source of the products Amazon.com sells and by its continuous and broad use for virtually the entire life of the Internet as a commercial medium. The AMAZON.COM® mark is registered in the European Union and in 72 individual countries, and has over 400 additional registration applications pending all over the world. AMAZON.COM® is a registered trademark with the United States Patent and Trademark Office for a computerized on-line search and ordering service featuring the wholesale and retail distribution of books, music, motion pictures, multimedia products and computer software in the form of printed books, audiocassettes, videocassettes, compact disks, floppy disks, CD ROMs, and direct digital transmission.

12. The AMAZON.COM® mark is particularly well known among Internet users, the trading areas and channel of trade used by both Amazon.com and Defendants. There are no similar marks in common commercial use. A recent review of the database maintained by the United States

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
CYBERPIRACY, UNFAIR COMPETITION, AND
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Patent and Trademark Office reveals not a single registration for any mark that included both “amazon” and “com.”

13. Amazon.com is one of the best-known Internet retailers in the world today. Jeff Bezos (“Bezos”), the company’s founder, was a pioneer in the use of the Internet as a medium of commerce. In 1995, Bezos created an Internet Web site (“Amazon.com Site”) that permitted consumers around the world to purchase books on-line. Amazon.com was one of the first corporations to make the name of its business identical to the domain name from which its business operates—such that anyone using the Internet to find its Web site need only remember the name of the company.

14. Since its inception, the Amazon.com Site has continuously operated from the Internet address <www.amazon.com>. When Amazon.com opened its cyber-doors, its site primarily featured books, which is still an integral part of Amazon.com's business. Since then, Amazon.com has expanded its operations to include an even broader selection of products, offering full line of goods ranging from computer products and electronics to toys to compact discs and movies on videotape and DVD.

15. Since at least as early as 1995, Amazon.com has used the trademark AMAZON.COM® to promote its business and its websites.

V. DEFENDANTS ILLEGAL ACTS

16. On information and belief, sometime on or before May 6, 2003, defendants conducted an extensive e-mail campaign. As part of that campaign, defendants, acting together and in concert, created and sent large volumes of e-mail messages advertising their websites and "Free Grant" offers. Some of the e-mails were designed so that they appeared to be sent from Amazon.com, and used the AMAZON.COM® mark in the e-mail header as the "from" address. *See Exhibit A.* Many of the e-mails also used the AMAZON.COM® mark in the e-mail header as the "to" address, causing the e-mails to be sent to Amazon.com's servers, as well as to the numerous addressees listed

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
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as "cc's."

17. Amazon.com did not provide permission to defendants to use its AMAZON.COM® trademark for any reason, including their e-mail marketing campaign.

18. On information and belief, Defendants intentionally adopted the AMAZON.COM® mark to trade on the fame and goodwill associated with the AMAZON.COM® mark, and to evade customers' anti-spam filters specifically designed to permit the receipt of e-mail from Amazon.com.

19. Defendants' use of the AMAZON.COM® mark is likely to cause consumer confusion, mistake, and deception. This likelihood of confusion, mistake, and deception is even greater because both Amazon.com and Defendants operate their businesses over the Internet.

20. Defendants' use of the AMAZON.COM® mark is likely to lead consumers to mistakenly conclude that the e-mail from defendants was exclusively or jointly sent by, licensed or certified by, or otherwise sponsored or approved by Amazon.com, or that Cyberpower is somehow otherwise affiliated, connected, or associated with Amazon.com. Consumers are likely to be misled as to the true source, sponsorship, or affiliation of the e-mail.

21. On information and belief, through their use of the AMAZON.COM® mark, Defendants have intentionally and with knowledge sought to cause consumer confusion, mistake, and deception.

COUNT I

TRADEMARK INFRINGEMENT UNDER LANHAM ACT 15 U.S.C. § 1114

22. Amazon.com realleges paragraphs 1-21 of this Complaint as if fully set forth herein.

23. Defendants' use of the AMAZON.COM® to promote, market, or sell products and services constitutes trademark infringement pursuant to 15 U.S.C. § 1114. Defendants' intentional and willful infringement of the AMAZON.COM® registered trademark has caused and will continue to cause damage to Amazon.com, and is causing irreparable harm to Amazon.com for which there is no adequate remedy at law. Defendants are directly, contributorily, and/or vicariously liable for

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
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1 these actions.

2 **COUNT II**

3 **FALSE DESIGNATION OF ORIGIN UNDER LANHAM ACT 15 U.S.C. § 1125(a)**

4 24. Amazon.com realleges paragraphs 1-23 of this Complaint as if fully set forth herein.

5 25. Defendants have used and continue to use AMAZON.COM® in connection with
6 goods or services, in commerce, in a manner that is likely to cause confusion, mistake, or deception
7 as to the origin, sponsorship, or approval of their goods or services. Defendants are directly,
8 contributorily, and/or vicariously liable for these actions. Amazon.com has been damaged by these
9 acts in an amount to be proved at trial. Amazon.com is also entitled under the Lanham Act to
10 injunctive and equitable relief against defendants.

11 **COUNT III**

12 **CYBERPIRACY PREVENTION UNDER LANHAM ACT 15 U.S.C. § 1125(d)**

13 26. Amazon.com realleges paragraphs 1-25 of this Complaint as if fully set forth herein.

14 27. Defendants' bad faith intent to profit from use of AMAZON.COM®, by sending e-
15 mail messages that state they are from AMAZON.COM® that are confusingly similar to
16 Amazon.com's distinctive marks, constitutes cyberpiracy under 15 U.S.C. § 1125(d). Defendants'
17 cyberpiracy of AMAZON.COM® has caused and will continue to cause damage to Amazon.com, in
18 an amount to be proved at trial, and is causing irreparable harm to Amazon.com for which there is
19 not an adequate remedy at law. Defendants are directly, contributorily, and/or vicariously liable for
20 these actions.

21 **COUNT IV**

22 **UNFAIR COMPETITION UNDER LANHAM ACT 15 U.S.C. § 1125(a)**

23 28. Amazon.com realleges paragraphs 1-27 of this Complaint as if fully set forth herein.

24 29. Defendants' use of the AMAZON.COM® mark to promote, market, or sell their
25 products or services, including on their website, constitutes Unfair Competition pursuant to 15
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COMPLAINT FOR TRADEMARK INFRINGEMENT,
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UNFAIR BUSINESS PRACTICE - 9

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1 U.S.C. § 1125(a). Defendants' use of the AMAZON.COM® mark is likely to cause confusion,
2 mistake, and deception among consumers. Defendants' unfair competition has caused and will
3 continue to cause damage to Amazon.com, and is causing irreparable harm to Amazon.com for
4 which there is no adequate remedy at law. Defendants are directly, contributorily, and/or vicariously
5 liable for these actions.

6 **COUNT V**

7 **UNFAIR BUSINESS PRACTICE UNDER WASHINGTON STATE LAW**

8 30. Amazon.com realleges paragraphs 1-29 of this Complaint as if fully set forth herein.

9 31. Defendants' use of AMAZON.COM® to promote, market, or sell products and
10 services, including on their website, constitutes an Unfair Business Practice pursuant to R.C.W.
11 19.86. Defendants' use of AMAZON.COM® is an unfair or deceptive practice occurring in trade or
12 commerce that impacts the public interest and has caused injury to Amazon.com. Defendants' unfair
13 business practice has caused and will continue to cause damage to Amazon.com, and is causing
14 irreparable harm to Amazon.com for which there is no adequate remedy at law.

15 **COUNT VI**

16 **TRESPASS TO CHATTELS**

17 32. Amazon.com realleges paragraphs 1-31 of this Complaint as if fully set forth herein.

18 33. The computers, computer networks and computer services used to operate
19 Amazon.com's business are the personal property of Amazon.com.

20 34. By spoofing Amazon.com's domain name in the e-mail "to" line and using false or
21 imaginary e-mail addresses, defendants intentionally directed their e-mail to Amazon.com's
22 computer, computer networks and computer services. This resulted in Amazon.com's computer
23 systems being required to receive and process a significant amount of junk e-mail, utilizing the
24 limited resources of Amazon.com's systems and making those resources unavailable for authorized
25 uses.

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COMPLAINT FOR TRADEMARK INFRINGEMENT,
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1 35. Additionally, defendants knew that their bulk-emailing practices inevitably lead to a
2 significant portion of their e-mail being undeliverable. When an e-mail is undeliverable, “bounce”
3 messages are generated to advise the sender of this fact. By spoofing Amazon.com’s domain name
4 in the e-mail header, defendants insured that Amazon.com’s computer equipment – rather than
5 defendants’ own equipment – was burdened by the innumerable bounce messages resulting from the
6 e-mail campaign.

7 36. Defendants have knowingly, intentionally and without authorization used and
8 intentionally trespassed upon Amazon.com's property.

9 37. As a result of defendants' actions, Amazon.com has been damaged in an amount to be
10 proven at trial.

COUNT VII

UNFAIR COMPETITION

13 38. Amazon.com realleges paragraphs 1-37 of this Complaint as if fully set forth herein.

14 39. Defendants' use of the AMAZON.COM® mark to promote, market, or sell their
15 products constitutes Unfair Competition. Defendants' use of the AMAZON.COM® mark is likely
16 to cause confusion, mistake, and deception among consumers. Defendants have acted in bad faith
17 and/or deliberately or willfully to infringe upon the AMAZON.COM® mark. Defendants are
18 directly, contributorily, and/or vicariously liable for these actions.

19 WHEREFORE, plaintiff respectfully prays that this Court:

20 1. Issue a permanent injunction, enjoining and prohibiting Defendants, or their agents,
21 servants, employees, officers, attorneys, successors and assigns from:

22 (A) Using AMAZON.COM® trademark, or any version thereof, in connection
23 with the description, marketing, promotion, advertising, or sale of any products or services,
24 including defendants' e-mails or websites; and

25 (B) Infringing Amazon.com's AMAZON.COM® trademark;

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
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1 2. Order an award of damages in an amount to be determined at trial; and
2 3. Order an award of treble damages, in an amount to be determined at trial, pursuant to
3 R.C.W. Ch. 19.86, and
4 4. Order an award of treble damages as provided by Section 35(a) of the Lanham Act;
5 and
6 5. Order an award of attorney's fees and costs as provided by Section 35(a) of the
7 Lanham Act and R.C.W. Ch. 19.86, and
8 6. Order an award of punitive damages to be determined at trial; and
9 7. Any other or further relief that the Court deems appropriate.

10 **VI. JURY DEMAND**

11 Plaintiff hereby demands a trial by jury of all issue in this case.

12 DATED this 25th day of August, 2003.

13 PRESTON GATES & ELLIS LLP

14 By 

15 David A. Bateman, WSBA #14262
16 Robert J. Dzielak, WSBA #26178

17 **OF COUNSEL:**

18 David A. Zapsky, Associate General Counsel
19 Kathryn M. Sheehan, Corporate Counsel
Amazon.com, Inc.

20 Attorneys for Plaintiff Amazon.com, Inc.
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COMPLAINT FOR TRADEMARK INFRINGEMENT,
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EXHIBIT A

From: "Damon Arnold" <oBv3tL0E@amazon.com>
To: <X96Fc9hOcT@amazon.com>
Sent: Tuesday, May 20, 2003 4:17 PM
Subject: <<< Free Big Money Cash Grants, Never Repay @

FREE CASH GRANTS, NEVER REPAY!

FOR A LIMITED TIME ONLY, PRICE REDUCED FROM \$99.95 TO ONLY \$39.95

TO GET MORE INFORMATION, SIMPLY CLICK [HERE!](#)

Get the money you need start your own business, a new career, or get the education you've always wanted. Its a fact ordinary people and businesses just like you are receiving millions from these programs and they don't have to pay it back, Ever!

Introducing thousands of money programs where you can find opportunities like:

- Business Grants
- Personal Grants
- Health Care Grants
- Educational Grants
- Money to Start a Company
- College Tuition assistance
- \$50,000 to Open a Coffee Shop
- \$30,000 to Go to School in Hawaii
- \$43,000 to Become a French Chef
- \$100,000 to Open a Country Inn
- \$70,000 to Study Arts Management
- \$6,500 For College
- \$5,000 to Train Your Employees
- Federal Direct Loans
- Scholarship Programs
- Free Tutoring
- Free Tuition If You're Over 55
- Home Business Assistance
- Minority assistance programs
- \$10/hr for a Part Time Job
- \$75,000 to Renovate an Old House
- \$2,000 to Study Storytelling
- \$63,000 To Cover College Expenses
- \$100,000 to Start a Day Care Center
- \$22,000 to Train a School Dropout
- \$50,000 to Edit Science Magazines

... and more! This year over \$25 Billion Dollars will be given away by these programs. If you do not qualify, your \$39.95 is refunded 100%. Satisfaction guaranteed!

VISIT OUR WEBSITE TO LEARN MORE!

If you are not interested in this offer please let us know!

Exhibit A